

AMENDED IN SENATE APRIL 24, 2003

SENATE BILL

No. 1080

**Introduced by Committee on Business and Professions (Senators
Figueroa (Chair), Aanestad, Brulte, Cedillo, Machado, Murray,
and Vincent)**

March 28, 2003

An act to amend Sections 5001, 5061, 5081, 5081.1, 5082, 5082.2, 5107, 5134, and 7583.9 of, and to repeal and add Section 5082.1 to, the Business and Professions Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1080, as amended, Committee on Business and Professions. Professions and vocations.

(1) Existing law provides for the regulation, licensure, and discipline of public accountants by the California Board of Accountancy. *Under existing law, each board member, other than the public members, is required to be actively engaged in the practice of public accountancy.* Existing law prohibits a public accountant from receiving a commission from a client while performing certain services.

This bill would ~~also~~ prohibit a public accountant from receiving a commission from a 3rd party for providing the 3rd party's products or services to a client. *The bill would make an exception to allow one licensee member appointed by the Governor to be an active educator or administrator in a college, university, or four-year program that emphasizes accounting.*

(2) Existing law sets forth the requirements for an applicant for admission to the examination for a certified public accountant.

The bill would specify that the application is for an authorization to be admitted to the examination for a certified public accountant.

(3) Existing law regulates the certified public accountant's examination process.

The bill would revise the examination process requirements, and specify that a public or private organization may conduct the exam. The bill would authorize the board to contract with a public or private organization for materials and services related to the exam. The bill would authorize the board to adopt regulations relating to the examination.

(4) Existing law requires a public accountant who is found guilty of certain types of unprofessional conduct to pay to the board all reasonable costs of investigation and prosecution of a case.

The bill would revise the provisions governing the basis for the board's recovery of costs.

(5) Existing law authorizes the board to fix the fee for the certified public accountant's examination at an amount to equal the board's actual cost and authorizes the board to consider certain factors in estimating the cost.

The bill would in addition authorize the board to consider the cost to the board to review and determine an applicant's qualifications.

(6) Existing law, the Private Security Services Act, licenses private patrol operators and requires a private security guard to register with the Bureau of Security and Investigative Services in the Department of Consumer Affairs. Under existing law, a person who applies for registration must submit classifiable fingerprint cards with his or her application.

This bill would exempt certain classes of peace officers from this requirement.

(7) This bill would declare that it would take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 5001 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 5001. ~~Each~~ (a) *Except as provided in subdivision (b), each*
- 4 *member of the board, except the public members, shall be actively*



engaged in the practice of public accountancy and shall have been so engaged for a period of not less than five years preceding the date of his appointment. Each member shall be a citizen of the United States and a resident of this state for at least five years next preceding his appointment, and shall be of good character. Within 30 days after their appointment, the members of the board shall take and subscribe to the oath of office as prescribed by the Government Code and shall file the same with the Secretary of State.

(b) One licensee member appointed by the Governor may be an active educator or administrator within a program that emphasizes the study of accounting within a college, university, or four-year educational institution.

SEC. 2. Section 5061 of the Business and Professions Code is amended to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client, or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a third party for providing the products or services of that third party to a client, or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client, or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the

1 period covered by any historical financial statements involved in
2 those listed services:

3 (1) An audit or review of a financial statement.

4 (2) A compilation of a financial statement when that person
5 expects, or reasonably might expect, that a third party will use the
6 financial statement and the compilation report does not disclose a
7 lack of independence.

8 (3) An examination of prospective financial information.

9 For purposes of this subdivision, “director” means any person
10 as defined under Section 164 of the Corporations Code and
11 “officer” means any individual reported to a regulatory agency as
12 an officer of a corporation. However, “director” and “officer”
13 does not include a director or officer of a nonprofit corporation, or
14 a corporation that meets the board’s definition of small business ,
15 as specified by regulation.

16 (d) A person engaged in the practice of public accountancy who
17 is not prohibited from performing services for a commission, or
18 from receiving a commission, and who is paid or expects to be paid
19 a commission, shall disclose that fact to any client or entity to
20 whom the person engaged in the practice of public accountancy
21 recommends or refers a product or service to which the
22 commission relates.

23 (e) The board shall adopt regulations to implement, interpret,
24 and make specific the provisions of this section including, but not
25 limited to, regulations specifying the terms of any disclosure
26 required by subdivision (d), the manner in which the disclosure
27 shall be made, and other matters regarding the disclosure that the
28 board deems appropriate. These regulations shall require, at a
29 minimum, that a disclosure shall comply with all of the following:

30 (1) Be in writing and be clear and conspicuous.

31 (2) Be signed by the recipient of the product or service.

32 (3) State the amount of the commission or the basis on which
33 it will be computed.

34 (4) Identify the source of the payment and the relationship
35 between the source of the payment and the person receiving the
36 payment.

37 (5) Be presented to the client at or prior to the time the
38 recommendation of the product or service is made.

(f) For purposes of this section, “fee” includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

~~SEC. 2.~~

SEC. 3. Section 5081 of the Business and Professions Code is amended to read:

5081. An applicant for an authorization to be admitted to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application prescribed by the board. This application shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the educational requirements specified in this article.

~~SEC. 3.~~

SEC. 4. Section 5081.1 of the Business and Professions Code is amended to read:

5081.1. Pursuant to subdivision (b) of Section 5090, an applicant for an authorization to be admitted to the examination for a certified public accountant certificate may qualify for admission with one of the following:

(a) The applicant shall present satisfactory evidence that the applicant has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.) with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present

1 satisfactory evidence of study substantially the equivalent of an
2 accounting major, including courses in related business
3 administration subjects.

4 (2) A degree or degrees from a college, university, or other
5 institution of learning located outside the United States that is
6 approved by the board as the equivalent of the baccalaureate
7 degree described in paragraph (1). The board may require an
8 applicant under this paragraph to submit documentation of his or
9 her education to a credentials evaluation service approved by the
10 board for evaluation and to cause the results of this evaluation to
11 be reported to the board. The board shall adopt regulations
12 specifying the criteria and procedures for approval of credential
13 evaluation services. These regulations shall, at a minimum,
14 require that the credential evaluation service (A) furnish
15 evaluations directly to the board, (B) furnish evaluations written
16 in English, (C) be a member of the American Association of
17 Collegiate Registrars and Admission Officers, the National
18 Association of Foreign Student Affairs, or the National
19 Association of Credential Evaluation Services, (D) be used by
20 accredited colleges and universities, (E) be reevaluated by the
21 board every five years, (F) maintain a complete set of reference
22 materials as specified by the board, (G) base evaluations only upon
23 authentic, original transcripts and degrees and have a written
24 procedure for identifying fraudulent transcripts, (H) include in the
25 evaluation report, for each degree held by the applicant, the
26 equivalent degree offered in the United States, the date the degree
27 was granted, the institution granting the degree, an English
28 translation of the course titles, and the semester unit equivalence
29 for each of the courses, (I) have an appeal procedure for applicants,
30 and (J) furnish the board with information concerning the
31 credential evaluation service that includes biographical
32 information on evaluators and translators, three letters of reference
33 from public or private agencies, statistical information on the
34 number of applications processed annually for the past five years,
35 and any additional information the board may require in order to
36 ascertain that the credential evaluation service meets the standards
37 set forth in this paragraph and in any regulations adopted by the
38 board.

39 (b) The applicant shall present satisfactory evidence that the
40 applicant has successfully completed a two-year course of college

level study or received an associate of arts degree from a community college, either institution accredited by a regional institutional accrediting agency that is included in a list published by the United States Secretary of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that the applicant has completed a minimum of 120 semester units which includes the study of accounting and related business administration subjects.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10 semester units in accounting subjects shall be completed at a college, university, or other institution of higher learning accredited at the college level by an agency or association that is included in a list published by the United States Secretary of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) The applicant shall be a public accountant registered under this chapter.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

~~SEC. 4.~~

SEC. 5. Section 5082 of the Business and Professions Code is amended to read:

5082. An applicant for a certified public accountant license shall have successfully passed examinations in subjects and in a form and manner that the board deems appropriate. The board may adopt regulations to prescribe the methods for applying for and conducting the examination that include grading and determining a passing grade.

~~SEC. 5.~~

SEC. 6. Section 5082.1 of the Business and Professions Code is repealed.

~~SEC. 6.~~

SEC. 7. Section 5082.1 is added to the Business and Professions Code, to read:

1 5082.1. (a) The board, or a public or private organization
2 specified by the board, may conduct the certified public
3 accountant license examination. The examination may be
4 conducted under a uniform examination system. The board may
5 use all or part of the Uniform Certified Public Accountant
6 Examination and Advisory Grading Service, as the board deems
7 appropriate.

8 (b) The board may contract or make arrangements with a public
9 or private organization as necessary to conduct the examination.
10 The board may contract on a sole source basis with a public or
11 private organization for material or services related to the
12 examination.

13 ~~SEC. 7.~~

14 *SEC. 8.* Section 5082.2 of the Business and Professions Code
15 is amended to read:

16 5082.2. For candidates seeking to be reexamined pursuant to
17 subdivision (b) of Section 5090, a candidate who fails an
18 examination provided for herein shall have the right to any number
19 of reexaminations at subsequent examinations . A candidate who
20 passes an examination in two or more subjects shall have the right
21 to be reexamined in the remaining subject or subjects only, at
22 subsequent examinations , and if he or she passes in the remaining
23 subject or subjects within a period of time specified in the rules of
24 the board he or she shall be considered to have passed the
25 examination.

26 This section shall remain in effect only until January 1, 2006,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2006, deletes or extends that date.

29 ~~SEC. 8.~~

30 *SEC. 9.* Section 5107 of the Business and Professions Code is
31 amended to read:

32 5107. (a) The executive officer of the board may request the
33 administrative law judge, as part of the proposed decision in a
34 disciplinary proceeding, to direct any holder of a permit or
35 certificate found guilty of unprofessional conduct in violation of
36 subdivisions (b), (c), ~~(e)~~, (j), or (k) of Section 5100, or involving
37 a felony conviction in violation of subdivision (a) of Section 5100,
38 or involving fiscal dishonesty in violation of subdivision (i) of
39 Section 5100, to pay to the board all reasonable costs of
40 investigation and prosecution of the case, including, but not

1 limited to, attorneys' fees. The board shall not recover costs
2 incurred at the administrative hearing.

3 (b) A certified copy of the actual costs, or a good faith estimate
4 of costs where actual costs are not available, signed by the
5 executive officer, shall be prima facie evidence of reasonable costs
6 of investigation and prosecution of the case.

7 (c) The administrative law judge shall make a proposed finding
8 of the amount of reasonable costs of investigation and prosecution
9 of the case when requested to do so by the executive officer
10 pursuant to subdivision (a). Costs are payable 120 days after the
11 board's decision is final unless otherwise provided for by the
12 administrative law judge or if the time for payment is extended by
13 the board.

14 (d) The finding of the administrative law judge with regard to
15 cost shall not be reviewable by the board to increase the cost award.
16 The board may reduce or eliminate the cost award, or remand to
17 the administrative law judge where the proposed decision fails to
18 make a finding on costs requested by the executive officer pursuant
19 to subdivision (a).

20 (e) The administrative law judge may make a further finding
21 that the amount of reasonable costs awarded shall be reduced or
22 eliminated upon a finding that respondent has demonstrated that
23 he or she cannot pay all or a portion of the costs or that payment
24 of the costs would cause an unreasonable financial hardship which
25 cannot be remedied through a payment plan.

26 (f) When an administrative law judge makes a finding that costs
27 be waived or reduced, he or she shall set forth the factual basis for
28 his or her finding in the proposed decision.

29 (g) Where an order for recovery of costs is made and timely
30 payment is not made as directed by the board's decision, the board
31 may enforce the order for payment in any appropriate court. This
32 right of enforcement shall be in addition to any other rights the
33 board may have as to any holder of a permit or certificate directed
34 to pay costs.

35 (h) In any judicial action for the recovery of costs, proof of the
36 board's decision shall be conclusive proof of the validity of the
37 order of payment and the terms of payment.

38 (i) All costs recovered under this section shall be deposited in
39 the Accountancy Fund.

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of any permit or certificate.

~~SEC. 9.~~

SEC. 10. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant seeking admission to the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board to review and determine an applicant's qualifications to be admitted to the examination and of administering the examination, and shall not exceed six hundred dollars (\$600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board to review and determine an applicant's qualifications to be readmitted to the examination and of administering the examination, and shall not exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative

1 cost to the board of processing and issuing the certificate and shall
2 not exceed two hundred fifty dollars (\$250).

3 (d) The application fee to be charged to each applicant for
4 issuance of a certified public accountant certificate by waiver of
5 examination shall be fixed by the board at an amount equal to the
6 estimated administrative cost to the board of processing and
7 issuing the certificate and shall not exceed two hundred fifty
8 dollars (\$250).

9 (e) The fee to be charged to each applicant for registration as
10 a partnership or professional corporation shall be fixed by the
11 board at an amount equal to the estimated administrative cost to the
12 board of processing and issuing the registration and shall not
13 exceed two hundred fifty dollars (\$250).

14 (f) The board shall fix the biennial renewal fee so that, together
15 with the estimated amount from revenue other than that generated
16 by subdivisions (a) to (e), inclusive, the reserve balance in the
17 board's contingent fund shall be equal to approximately six
18 months of annual authorized expenditures. Any increase in the
19 renewal fee made after July 1, 1990, shall be effective upon a
20 determination by the board, by regulation adopted pursuant to
21 subdivision (k), that additional moneys are required to fund
22 authorized expenditures other than those specified in subdivisions
23 (a) to (e), inclusive, and maintain the board's contingent fund
24 reserve balance equal to six months of estimated annual authorized
25 expenditures in the fiscal year in which the expenditures will
26 occur. The biennial fee for the renewal of each of the permits to
27 engage in the practice of public accountancy specified in Section
28 5070 shall not exceed two hundred fifty dollars (\$250).

29 (g) The delinquency fee shall be 50 percent of the accrued
30 renewal fee.

31 (h) The initial permit fee is an amount equal to the renewal fee
32 in effect on the last regular renewal date before the date on which
33 the permit is issued, except that, if the permit is issued one year or
34 less before it will expire, then the initial permit fee is an amount
35 equal to 50 percent of the renewal fee in effect on the last regular
36 renewal date before the date on which the permit is issued. The
37 board may, by regulation, provide for the waiver or refund of the
38 initial permit fee where the permit is issued less than 45 days
39 before the date on which it will expire.

(i) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(j) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(k) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(l) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

~~SEC. 10.~~

SEC. 11. Section 7583.9 of the Business and Professions Code is amended to read:

7583.9. (a) Upon accepting employment by a private patrol operator, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall complete an application for registration on a form as prescribed by the director, and obtain two classifiable fingerprint cards for submission to the Department of Justice. The applicant shall submit the application, the registration fee, and his or her fingerprints to the bureau. The bureau shall forward the classifiable fingerprint cards to the Department of Justice. The Department of Justice shall forward one classifiable fingerprint card to the Federal Bureau of Investigation for purposes of a background check.

(b) If a private patrol operator pays the application fee on behalf of the applicant, nothing in this section shall preclude the private patrol operator from withholding the amount of the fee from the applicant's compensation.

(c) The licensee shall maintain supplies of applications and fingerprint cards that shall be provided by the bureau upon request.

(d) In lieu of classifiable fingerprint cards provided for in this section, the bureau may authorize applicants to submit their fingerprints into an electronic fingerprinting system administered by the Department of Justice. Applicants who submit their fingerprints by electronic means shall have their fingerprints entered into the system through a terminal operated by a law enforcement agency or other facility authorized by the Department of Justice to conduct electronic fingerprinting. The enforcement agency responsible for operating the terminal may charge a fee sufficient to reimburse it for the costs incurred in providing this service.

(e) Upon receipt of an applicant's electronic or hard card fingerprints as provided in this section, the Department of Justice shall disseminate the following information to the bureau:

(1) Every conviction rendered against the applicant.

(2) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(f) (1) The requirement in subdivision (a) to submit a fingerprint card does not apply to any of the following:

(A) A currently employed, full-time peace officer holding peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(B) A level I or level II reserve officer under paragraphs (1) and (2) of subdivision (a) of Section 832.6 of the Penal Code.

(2) This subdivision does not apply to a peace officer required to obtain a firearm qualification card pursuant to Section 7583.12.

(g) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall submit verification of their active duty peace officer status to the bureau with their application for registration. A photocopy of the front and back of their peace officer identification badge shall be adequate verification.

(h) Peace officers exempt from the submission of classifiable fingerprints pursuant to subdivision (f) shall report a change in their active duty peace officer status to the bureau within 72 hours of the change in active duty peace officer status.

(i) (1) Peace officers exempt from obtaining a firearm qualification card pursuant to subdivision (c) of Section 7583.12

1 shall submit to the bureau with their application for registration a
2 letter of approval from his or her primary employer authorizing
3 him or her to carry a firearm while working as a security guard or
4 security officer.

5 (2) For purposes of this section, “primary employer” means a
6 public safety agency currently employing a peace officer subject
7 to this section.

8 (j) In addition to the amount authorized pursuant to Section
9 7570.1, the bureau may impose an additional fee not to exceed
10 three dollars (\$3) for processing classifiable fingerprint cards
11 submitted by applicants excluding those submitted into an
12 electronic fingerprint system using electronic fingerprint
13 technology.

14 (k) An employee shall, on the first day of employment, display
15 to the client his or her registration card if it is feasible and practical
16 to comply with this disclosure requirement. The employee shall
17 thereafter display to the client his or her registration card upon the
18 request of the client.

19 ~~SEC. 11.~~

20 *SEC. 12.* This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or safety
22 within the meaning of Article IV of the Constitution and shall go
23 into immediate effect. The facts constituting the necessity are:

24 In order that the regulatory changes proposed by this act may
25 take effect as soon as possible, it is necessary that this act take
26 effect immediately.

